



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 15, 1995

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-1247

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36445.

The City of Houston (the "city") received a request for the cellular phone bills of a city employee. You assert that this information is excepted in its entirety from required public disclosure by section 552.108 of the Government Code. You also assert that portions of this information are excepted under sections 552.101 and 552.024 of the Government Code. You have submitted sample documents for our review.¹

Section 552.108 excepts from required public disclosure the following information:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime

¹In reaching our conclusion here, we assume that the "representative sample of records submitted to this office is truly representative of the requested records as a whole. See Government Code § 552.301(b)(3) (governmental body may submit representative samples of information if voluminous amount of information was requested); see also Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.

When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. See generally Open Records Decision No. 127 (1976). When an investigation is no longer active, an agency claiming the "law enforcement" exception must reasonably explain, if the information does not supply the explanation on its face, how its release would unduly interfere with law enforcement or crime prevention. Open Records Decision No. 434 (1986) at 3 (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Whether information falls within the section 552.108 exception must be determined on a case-by-case basis. *Id.* at 2.

You provided our office with an affidavit from a city police officer, stating that the police department's Public Integrity Review Group is currently conducting an investigation relating to the city employee whose cellular phone bills are being requested. Because the requested information relates to an active criminal investigation and is not the type of information that would normally be included on the first page of an offense report, we conclude that the city may withhold this information.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'RWS', followed by a stylized flourish or checkmark.

Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/rho

²Because we have found that under the present circumstances as you have presented them, the city may withhold the requested information in its entirety under section 552.108, we do not reach the issue of whether any of the information would be excepted from disclosure under the other exceptions that you raised.

Ref.: ID# 36445

Enclosures: Submitted documents

cc: Ms. Adriene Jackson
5410 Briarwood Forest Drive
Houston, Texas 77088
(w/o enclosures)